and submit a plan to the State Authority, but this is for the purpose of showing the particular lands or parts thereof which it will be necessary to acquire, and so the plan is for the convenience of the State Government. After study of this plan, Government may decide that all the lands shown on it are needed, or only some of them, or only some of them and part or parts of others.

Only after the State Authority has *decided* which of the lands referred to in the plan and to what extent, are needed for any of the purposes set out in section 3, is it necessary for a declaration in Form D to be gazetted under section 8. With respect, we agree with the learned judge that the meat of this declaration is contained in its first paragraph, for while it is true that its second paragraph refers to a plan, that is only to enable owners and other interested persons to check whether or not their lands are to be acquired and if so to what extent. Section 8 does not require that the purposes for which the lands or parts are to be acquired, should be stated on the plan, and it would appear that it was quite unnecessary for — and in the event foolish of — the State Authority to invite the applicants and other owners to inspect the rather elaborate plans prepared in the instant case. All that section 8 requires (by its subsection (2)) is that a list of the lands or parts thereof that are needed by the State Authority be included in a schedule to Form D. That was done here, and so in our view the declaration in that Form in the words of subsection (3) of section 8 is 'conclusive evidence that all the scheduled [lands] referred to therein [are] needed for the purpose specified therein'."

Since I have held that the notices given under the Act are valid and effective and comply with the provisions under the Land Acquisition Act and the acquisition was lawful and did not infringe any of the provisions of the Act, it naturally follows that the plaintiffs are only entitled to damages if in the process of acquiring the lands the defendants acted *mala fide*. There is no allegation or evidence of this before this court.

The collector under the provisions of the Act conducted the inquiry as to the compensation to be paid to the plaintiffs. It is alleged by the defendants that certain types of damage were not brought to their notice. However, whatever it may be, the collector conducted an inquiry and made an award of compensation. Having considered all the circumstances, the plaintiffs have not asked for a reference to the court on the award. Part V (section 37) of the Act lays down a procedure for any person who is not satisfied with the amount of compensation to make objection in spite of which the plaintiffs have not sought to challenge the award by way of a reference to the court. Therefore, the question of damages does not arise. Furthermore, as pointed out by counsel for the defendant, the payment of compensation by the plaintiffs is purported to be made on August 27, 1973, *i.e.*, after the Notice of Declaration of Intended Acquisition was published on February 1, 1973. There was no need for such compensation to be made and the beneficial interest in the land has already been taken away from them. In addition, no conclusive proof of the other losses were adduced in court.

For these reasons stated above the suit is dismissed with costs.

Suit dismissed.

Solicitors: *Lim Kean Chye & Co.*

SEIKO ELECTRONICS INDUSTRIES SDN. BHD. v. CHUNG KHIAW BANK LTD.

[O.C.J. (Syed Othman J.) August 4, 1976]
[Johor Bahru — Civil Suit No. 118 of 1975]

Practice and Procedure — Final judgment given against debtor — Appeal against award of interest — Whether it contravened O. 40 r. 11(2) — R.S.C. 1957, O. 14 and O. 40, r. 11(2).

Order 40 rule 11 read as a whole bears no intention to disturb rights in the matter of interest agreed upon by the parties. It would be another matter if the rate of interest charged contravenes some specific provision of law.

Cases referred to:-

(1) *Ex parte Fewings* [1882] 25 Ch.D. 338, 355.

(2) *Economic Life Assurance Society* v. *Usborne & Ors.* [1902] A.C. 147.

CIVIL SUIT.

Chua Jui Leng for the appellant/first defendant.

L.M. Ong for the respondent/plaintiff.

Syed Othman J.: The appellant (first defendants) appeals against the decision of the Senior Assistant Registrar on October 15, 1975 ordering (under Order 14 Rules of the Supreme Court) the respondent (bank) to be at liberty to sign final judgment in an action against the appellant in the sum of $541,157.08 with interest at 12.5% per annum with monthly rests from March 21, 1975 until payment thereof as in the statement of claim and $200 costs.

The bank's statement of claim avers that the appellant is indebted to the bank in the sum of $619,662 at interest originally at 9.5% per annum and thereafter at 12.5% per annum with monthly rests for bank charges as on March 20, 1975; the other defendants by a letter of guarantee of November 20, 1972 jointly and severally guaranteed payment of all moneys lent or advanced by the bank to the appellant together with interest, commission and bank charges up to the total of $200,000 and then by a letter of guarantee on January 20, 1973 the sum was enlarged to $1,050,000; on letters of demand to all defendants to pay, the appellant on March 15, 1975 paid only $78,505.50 leaving a balance of $541,157.08. The appellant, in defence, denies the claim but says in the alternative, that if the sum is found due and owing, the whole is not due and payable, as the bank had agreed to payment by instalments; admits having paid $78,505.50 but denies the balance due, and says, in the alternative, the full balance as denied is not due as the claim is premature.

The bank applied for summary judgment against the appellant for the balance at interest 12.5% with monthly rests from March 21, 1975. The affidavit by the Branch Manager of the Bank, supporting the application, sets out the account showing the balance; deposes that a demand for payment of the balance was made on April 2, 1975 and the appellant in reply by letter dated April 3, 1975 admits the balance as the sum owing and that the bank has been asking for the overdue amount all the time. The relevant portion of the appellant's letter (Exhibit B) to the bank's solicitors reads:

"We understand our company at this stage incur debts to your client of $619,662 of which $78,505.50 had been settled

leaving a balance of $541,157.08. We do consider this is considerably big amount for our company to settle at one time. We plead to you to give us some time to settle the whole sum due to you. We are sincerely making all effort to settle.

The scheduled payment proposed by our company is as follows:—

(i) Lump sum payment of $100,000 to be settled on or before the end of April.

(ii) Monthly instalment of $10,000 per month from May, 1975 towards end of 1975.

(iii) Monthly instalment of $15,000 per month from January, 1976 onwards till the full settlement of our outstanding account.

Since we had been asked to settle the overdue payment all the time, and we are now making every effort to settle. We hope you could convey the message over to your client to give us a chance to settle."

The bank's solicitors by letter on April 8, 1979 replied stating that the proposal to pay by instalments was not acceptable to the bank as the above sum had long been outstanding and there was no security for payment.

A director of the appellant, Yeo Soo We, in an affidavit of July 6, 1975 says that the bank agreed to lend appellant up to a limit of $450,000 with interest to be secured by a charge on properties comprised in private lots totalling 22 acres 0 rood 19.27 poles forming part of land held under Johore Government Grant No. 25 Lot 343 containing an area of 34 acres 0 rood 05 poles; the charge and other relevant instruments would be charged in escrow pending the approval of sub-division of the land and realisation of a separate document of title; and that the bank by letter dated January 28, 1975 enquired from the common solicitors of the parties, whether sub-division of land had been approved.

By a supplementary affidavit of July 31, 1975 Yeo Soo We says the letter of the bank's solicitors of April 2, 1975 making the demand to pay up is bad because it did not give 7 clear days from the date of demand as required by clause 2 of the "charge".

What is said by Yeo Soo We to be a charge and annexed to the affidavit of July 6, 1975 is a document purporting to be Form 16A under the National Land Code and the usual annexure showing particulars and conditions of a charge. The form and annexure are signed by 3 directors of the appellant and bear the seal of the company. The purported Form 16A does not show any particulars or description of the land to be charged. Neither the form nor the annexure is signed by or on behalf of the bank. It is in effect a charge over nothing.

Before the Senior Assistant Registrar, the solicitors for the appellant submitted 3 points as showing grounds for refusing the application for summary judgment and the defence being fit for trial. The Senior Assistant Registrar somewhat painstakingly dealt with each ground.

Point 1. There was an agreement to pay by instalments. From the appellant's own letter it was the appellant itself who required the bank to allow payment by instalments. The bank through their solicitors turned it down. Up to now the appellant has not even lived up to its own proposal.

Point 2. The bank agreed to execute a charge over appellant's land after sub-division of the land, and had thereby agreed not to demand payment until the charge was duly executed. Even if that is so, the appellant has not done anything to have the land sub-divided so that a proper title can be charged. It was known to parties that undivided land could not be charged. So far as it affects the case, section 241 of the National Land Code says in effect that any alienated land but not a part of it may be charged. From Yeo Soo We's own affidavit the appellant's solicitors did not even reply to the bank's letter of January 28, 1975 enquiring whether the land had been sub-divided.

Point 3. The notice served by the bank failed to give 7 days as required by the proposed charge to be entered into by the parties. The very point raised contains an answer. A proposal is not binding. It is in effect what the appellant tried to impose on the bank.

Considering the whole matter, I find that the bank has been accommodating the appellant from 1973 and the appellant on its part up till now has not done anything to fulfil its own proposals.

I agree with Senior Assistant Registrar the points raised do not show that the defendants have any defence.

Before me it is raised that the award of interest of 12.5% is against O.40 r.11(2). I ordinarily would not deal with a point in an appeal which was not raised in the court below. This point is not even pleaded. In any case, I feel it is necessary to say something about the rule for general guidance. The rule is purely local as commented in *Mallal's* Supreme Court Practice. Rule 11 reads:

"(1) In any proceedings tried in the Supreme Court for the recovery of any debt or damages, the court may, if it thinks fit, order, that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the period between the date when the cause of action arose and the date of judgment:

Provided that nothing in this rule contained—

(a) shall authorise the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall effect the damages recoverable for the dishonour of a bill of exchange.

(2) Every judgment for the payment of money shall bear interest at the rate of six per cent per annum."

Proviso (b) in sub-rule (1) in effect lays down, among other things, that nothing in the rule shall apply to any debt on which interest is payable as of right under any agreement. Sub-rule (2) cannot therefore be read as overriding the rate of interest agreed upon between the parties. If the agreed interest is less than 6%, the judgment creditor cannot claim for more by invoking sub-rule (2). Similarly if the agreed interest is more than 6% the judgment debtor cannot ask for the rate to be reduced to 6%. It should be clear that the rule read as a whole bears no intention to disturb rights in the matter of interest agreed upon by the parties. It would be another matter if the rate of interest charged contravenes some specific provi-

sion of law. To go further I need only advert to two English authorities as I am inclined to believe that rule 11 was introduced with these authorities in mind.

In *Ex parte Fewings*[1] Fry L.J. at page 355 said:

"When there is a covenant for the payment of a principal sum, and a judgment has been obtained upon the covenant for that sum, it is plain that the covenant is merged in the judgment, and, if there is a covenant to pay interest which is merely incidental to the covenant to pay principal debt, that covenant also is merged in a judgment on the covenant to pay the principal debt. Of course covenant to pay interest may be so expressed as not to merge in a judgment for the principal; for instance, if it was a covenant to pay interest so long as any part of the principal should remain due either on the covenant or on a judgment."

In *Economic Life Assurance Society* v. *Usborne & Ors.*[2] Earl of Halsbury at pages 149-50 remarking that Fry L.J. has put the point with great precision and accuracy said:

"My Lords, if that is accurate, it seems to me that that the question is a simple one; it is a question of the construction of this particular deed and the remedy that is now being enforced.

My Lords, it is not necessary to proceed to discuss what follows from what I have said, because it is manifest on the true construction of this instrument, that there is a right to have the interest at the agreed rate...."

In the present case the appellant agreed to the bank rate of 12.5% for the overdraft facilities. The rule to my mind, precludes the court from disturbing the rate that has been agreed, unless, of course, if it can be shown that the rate as imposed is illegal.

Appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chua Bros.; L.M. Ong.*

TAN CHENG HIN & ANOR. v. LIM JEW SIANG & ORS.

[O.C.J. (Mohamed Azmi J.) July 10, 1975]

[Kuala Lumpur — Civil Suit No. 1341 of 1974]

Practice & Procedure — Injunction — Interim injunction — Application for dissolution of — Status Quo — Preservation of — Whether circumstances permit.

Land Laws — Lease — Unregistered lease — Whether void for non-registration — National Land Code, s. 222.

By an agreement made in May 1966, the defendants as trustees of an association known as "SKCWK" leased certain portions of the premises in dispute to the plaintiffs as trustees of Nanyang Hotel for twenty years with effect from August 15, 1965. When the agreement was executed, the lease could not be registered because at that time "SKCWK" had only been granted an Approved Application under the old Land Code in respect of the land upon which the demised premises were situated. "SKCWK" had also assigned the Approved Application to Malayan Banking Berhad to secure a loan from the said bank, as the land could not be charged to the bank at that time in the absence of any Document of Title.

The plaintiffs alleged, *inter alia*, that the said bank held the land as trustee in favour of "SKCWK", and despite the plaintiffs' written request, the defendants had failed to get the bank as their trustee to execute a registrable lease in favour of the plaintiffs for the remainder of the twenty years period. The defendants had issued a notice dated September 19, 1974, purporting to increase the monthly rental of the lease from $2,800 to $4,000 in contravention of the terms of the agreement. In that notice, they indicated that the plaintiffs would have to quit and deliver vacant possession of the premises on or before October 30, 1974 upon failure to pay the increased rent.

The defendants, on the other hand, denied the said allegations, and contended that the 1966 lease agreement was not enforceable and null and void for non-registration by virtue of section 222 of the National Land Code. The defendants applied for dissolution of an interim injunction granted by the lower court in favour of the plaintiffs, restraining the defendants from committing a breach of the said agreement.

Held, dismissing the defendants' application: this is a proper case where the *status quo* should be maintained until the plaintiffs' claim for perpetual injunction or specific performance is disposed off.

Case referred to:-

(1) *Lee Ah Low* v. *Cheong Lap Keen & Anor.* [1970] 1 M.L.J. 7 F.C.

CIVIL SUIT.

John Bernatt for the defendants/applicants.

Y.M. Chin for the plaintiffs/respondents.

Mohamed Azmi J.: By Notice of Motion dated February 21, 1975, the defendants apply for dissolution of an interim injunction granted by Abdul Hamid J. by order made on November 4, 1974. They also apply that the plaintiffs' pleadings be struck off and that the defendants be given judgment on their counterclaim with costs. By the said injunction, the defendants are restrained from committing a breach of the written agreement made in May 1966 between the plaintiffs as trustees for the partners of Nanyang Hotel, and the defendants as trustees of an association known as Selangor Keng Chew Wee Kuan (hereinafter referred to as "SKCWK") touching upon the second, third, fourth and fifth floors and the back portion of the ground floor of the nine-storey building known as premises No. 83, Jalan Sultan, Kuala Lumpur. Before me, only the application for dissolution of the interim injunction was argued. As correctly suggested by Mr. Bernatt, counsel for the defendants, he would only proceed with the other prayers if his application in respect of the injunction was successful.

From the pleadings, it is not in dispute that by virtue of an agreement dated May 1966, the defendants as trustees of "SKCWK" leased the second, third, fourth and fifth floors and the back portion of the ground floor of the premises in dispute to the plaintiffs as trustees of Nanyang Hotel for a period of twenty years with effect from August 15, 1965. When the agreement was executed, the lease could not be registered because at that time "SKCWK" had only been granted an Approved Application under the old Land Code in respect of the land upon which the demised premises are situated. Further, "SKCWK" had also assigned the Approved Application to Malayan Banking Berhad to secure a loan from the said bank, as the land could not be charged to the bank at that time in the absence of any Document of Title.

By paragraphs 7 and 9 of the Statement of Claim, the plaintiffs allege that the Selangor State Authority has now granted a lease for 99 years in respect of the said land to Malayan Banking Berhad being assignee of the original Approved Application. It is alleged